

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

Baxville, Inc. doing business as Richway Plastics)	Complaint No. R4-2004-0044
4168 Bandini Blvd.)	for
Vernon, California 90058)	Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Baxville, Inc., doing business as Richway Plastics (Richway Plastics) is alleged to have violated California Water Code (CWC) § 13376 for discharge of pollutants without a report of waste discharge and permit for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose administrative civil liability under CWC §§ 13323 and 13385 (c)(1).
2. Richway Plastics, located at 4168 Bandini Blvd. in the city of Vernon, California, was inspected on February 26, 2004 by staff from the Regional Board and from the City of Vernon Environmental Health Department (City EHD). The inspectors confirmed that the facility is a plastic bag manufacturing and plastic bag coating or painting facility, and that the operator was required to file a Notice of Intent (NOI) to obtain coverage under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, State Water Resources Control Board Order Number 97-03-DWQ and NPDES Number CAS 000001 (General Permit). Prior to this inspection, City EHD had issued a municipal code violation notice, requiring that Richway Plastics enroll in the General Permit by submitting an NOI. The Regional Board inspector confirmed that the facility was subject to the requirements of the General Permit at the date of inspection. In addition, the inspector specifically advised Richway Plastics on February 26, 2004 of the requirement to file the NOI.
3. During the February 26, 2004 inspection, the inspectors observed evidence of discharge of plastic pellets and trash. A large sustained rain on February 25, 2004 resulted in discharge from the facility. Spillage of pellets in and around a loading dock on the west side of the facility was exposed to storm water, and the inspectors documented the evidence of discharge from the apparent source area, along the south side of the facility, and to a railroad spur on the east side of the facility. Discharge of pellets to a storm drain of the Los Angeles County Department of Public Works was evident. This storm drain system leads directly to the Los Angeles River. Discharge of pollutants is a violation of CWC § 13385.

June 2, 2004

4. Pursuant to CWC § 13304, a Cleanup and Abatement Order (Order No. R4-2004-0038), a copy of which is attached hereto and incorporated by reference, was issued on March 24, 2004. Order No. R4-2004-0038 required Richway Plastics to implement certain measures to ensure that the quality of the water in the Los Angeles River potentially impacted by Richway Plastics discharges met the requirements of California law and this Regional Board's *Water Quality Control Plan*. Included in the Order were requirements to clean all pollution, file an NOI, comply with City EHD requirements, and develop a Storm Water Pollution Prevention Plan (SWPPP). The first progress report required by Order No. R4-2004-0038 was due April 2, 2004. A response to the Order dated April 30, 2004 was received May 6, 2004. This response did not fully meet the requirements in the Order.
5. The Regional Board *Water Quality Control Plan* (Basin Plan) adopted on June 13, 1994 contains numeric and narrative water quality objectives for the Los Angeles River. Existing beneficial uses listed in the Basin Plan for the Los Angeles River include the following: ground water recharge, non-contact recreational use, warm fresh water habitat, aquatic and wildlife habitat, and rare, threatened or endangered species. Potential beneficial uses listed in the Basin Plan for the Los Angeles River include the following: municipal and domestic supply, industrial process and service supply, migration of aquatic organisms and spawning; reproduction and early development.
6. A follow-up inspection of Richway Plastics was performed on March 30, 2004. In general, clean-up activity had been substantially completed, the NOI was submitted on March 25, 2004, and City EHD storm water requirements had been met. Richway Plastics is currently regulated under the General Permit. This facility was enrolled in the General Permit on March 29, 2004 under WDID Number 419I 018726, and is identified by Standard Industrial Classification code description 2673; Plastic Bag Manufacturing.
7. CWC § 13376 requires any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of the Regional Board to file a report of discharge, and prohibits the discharge of pollutants except as authorized in waste discharge requirements issued by the Regional Board. CWC § 13385(a)(1) provides that any person violating CWC § 13376 shall be civilly liable, and CWC § 13385(c) provides that the Regional Board may administratively impose civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

ALLEGED VIOLATIONS

8. The discharge evidence observed by City EHD and Regional Board staff on February 26, 2004 is alleged to be in violation of CWC § 13376.

CONCLUSIONS

Richway Plastics violated CWC § 13376 by discharging plastic pollutants into a storm drain system of the Los Angeles County Department of Public Works, which drains to the Los Angeles

River. After consideration of the above information, the Regional Board Executive Officer (Executive Officer) proposes administrative civil liability be imposed on Baxville, Inc. in the amount of \$10,000.

IMPACTS

This discharge may have negatively impacted the designated beneficial uses of waters of the State and seriously affected aquatic and avian life in and around the Los Angeles River. The discharge to surface waters was unauthorized and unmonitored.

MAXIMUM CIVIL LIABILITY

PENALTY CATEGORY	CALCULATION	TOTAL
Discharge of pollutants without NPDES Waste Discharge Requirements (CWC § 13376). CWC §13385 (c)(1) prescribes civil liability of \$10,000 per day.	\$10,000 per day x one year and 135 days (500 days)	\$5,000,000
Maximum ACL		\$5,000,000

9. Pursuant to CWC § 13385(e), the Regional Board is required to consider the following factors in determining the amount of administrative civil liability to be imposed:
 - a. The nature, circumstances, extent, and gravity of the violation:
The discharge of pollutants to waters of the State without a permit is a serious violation because it impairs the Regional Board's ability to protect public health and water quality. Richway Plastics was in violation of this requirement for one year and 135 days, from September 17, 2001, when Richway Plastics filed for incorporation with the State of California until March 25, 2004, when Richway Plastics submitted a Notice of Intent to enroll in the General Permit.
 - b. Susceptibility of the discharge to clean-up or abatement:
The discharge of plastic pellets is not easily cleaned up or abated once the discharge has entered waters of the State. Therefore, a reduction from the maximum civil liability is not warranted.
 - c. Degree of toxicity or adverse effect of the discharge:
Plastic pellets are extremely injurious to marine, river and avian life. The ingestion of pellets to vertebrate organisms effectively causes starvation as pellets accumulate in their digestive tracts, with mortality as the final result.
 - d. Violator's ability to pay:
Information has not been provided to the Regional Board to determine the ability of Richway Plastics to pay. The Regional Board feels that the penalty is correctly assessed; therefore, no reduction in the civil liability is warranted.

- e. Effect on the Violator's ability to continue its business:
Regional Board staff have no information to determine the impact of the proposed penalty on Richway Plastics' ability to continue its business.
- f. Voluntary clean-up efforts undertaken:
Richway Plastics had not undertaken voluntary clean-up of its discharged plastic pellets as of the February 26, 2004 inspection.
- g. Prior history of violations:
City EHD had several environmental health concerns at Richway Plastics dating from October 2003. On February 5, 2004 City EHD issued an inspection report requiring Richway Plastics to file an NOI and enroll in the General Permit. City EHD referred the case to the Regional Board on February 5, 2004. The Regional Board does not have a record of other violations, and cannot determine the potential impact of this factor.
- h. Degree of culpability:
The Regional Board sent Richway Plastics a Notice of Non-Compliance (NNC) dated February 10, 2004 after it had been identified as a facility that may be subject to the requirements of the General Permit. Richway Plastics responded to the NNC with a Notice of Non-Applicability (NNA) dated February 19, 2004 in which Mr. Howard HO stated Richway Plastics was not required to enroll in the Permit. During the facility inspection conducted on February 26, 2004 Richway Plastics was informed by a Regional Board inspector that Richway Plastics needed to file an NOI. A Notice of Violation (NOV) was then sent to Richway Plastics on March 1, 2004 denying the NNA and again requiring an NOI be submitted. Finally, Order No. R4-2004-0038 was issued on March 24, 2004 requiring clean-up of pollution, and the filing of the NOI and development and submittal of a Storm Water Pollution Prevention Plan (SWPPP). The NOI was submitted on March 25, 2004. A SWPPP was received on May 6, 2004, but was lacking many of the elements required by the General Permit. Therefore, no reduction in the civil liability is warranted.
- i. Economic benefit or savings resulting from the violation:
Regional Board staff can not determine economic benefit or savings, since Richway Plastics did finally enroll in the Permit. The full development and implementation of the SWPPP is yet to be realized. A telephone call from staff to Richway Plastics on May 19, 2004 in an attempt to address SWPPP inadequacies was never returned to staff.
- j. Other matters as justice may require:
Richway Plastics was extremely resistant to acknowledging responsibility for discharge of pollutants, and did not comply with the City EHD requirement to submit an NOI. Staff has expended 35 hours of time for correspondence preparation, facility visits and enforcement follow-up. Staff cost recovery is thus \$2,450, which is calculated at the rate of \$70 per hour.

PROPOSED CIVIL LIABILITY

Having considered the factors identified in Paragraph 9 above, the Regional Board Executive Officer assesses administrative civil liability against Richway Plastics in the amount of \$10,000.

PENALTY CATEGORY	CALCULATION	TOTAL
Discharge of pollutants without NPDES Waste Discharge Requirements (CWC § 13376). CWC §13385 (c)(1) prescribes civil liability of \$10,000 per day.	\$10,000 per day Observation of discharge on February 26, 2004	\$7,550
Staff cost recovery	35 hours x \$70 per hour	\$2,450
Recommended ACL		\$10,000

10. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on Richway Plastics. Richway Plastics will be notified at least ten days in advance of the date, time and place of the hearing. Richway Plastics or a representative for Richway Plastics will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board
11. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of greater judicial civil liability.
12. In the event that Richway Plastics fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement
13. Richway Plastics may waive the right to a hearing. Should Richway Plastics choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 6, 2004. A check in the amount of \$10,000 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.

If you have any questions, please contact Wendy Phillips at (213) 576-6618 or Jeff Mack at (213) 620-2121.

Date

Dennis A. Dickerson
Executive Officer

WAIVER OF HEARING

(1) By signing below and attaching a check for the amount of \$10,000 Baxville, Inc. dba Richway Plastics, on behalf of itself, waives the right to a hearing before the Regional Board or Regional Board Hearing Panel, Baxville, Inc. dba Richway Plastics understands that it is forgoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. Furthermore, Baxville, Inc. dba Richway Plastics, understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment will be due thirty days after the date of adoption.

Signature: _____

Name: _____

Position: _____

Baxville Inc. dba Richway Plastics

Date: _____